

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEAN F. McAVOY, CLERK

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I. BACKGROUND

A. Plaintiff the United States of America, on behalf of the United States Coast Guard (the “Coast Guard”), filed a complaint against Deaton Land, LLC (“Defendant”) under Section 1002 of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702, seeking to recover removal costs resulting from the discharge of oil from an onshore facility located at 2330 Outlook Road, Outlook, Washington (the “Outlook Facility”).

B. Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

C. The United States has reviewed the Financial Information submitted by Defendant to determine whether Defendant is financially able to pay the removal costs incurred by the United States as a result of the oil discharge from the Outlook Facility. Based upon this Financial Information, the United States has determined that Defendant has limited financial ability to pay the removal costs incurred by the United States as a result of the oil discharge from the Outlook Facility.

D. The United States and Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and

1 complicated litigation between the Parties, and that this Consent Decree is fair,
2 reasonable, and in the public interest.

3 THEREFORE, with the consent of the Parties to this Decree, it is
4 ORDERED, ADJUDGED, AND DECREED:

5 **II. JURISDICTION**

6 1. This Court has jurisdiction over the subject matter of this action under
7 28 U.S.C. §§ 1331 and 1345 and 33 U.S.C. § 2717(b), and has personal jurisdiction
8 over Defendant.

9 2. Venue is proper in the Eastern District of Washington under 28 U.S.C.
10 § 1391(b) and 33 U.S.C. § 2717(b) because it is the judicial district in which the
11 discharge occurred and the claim arose.

12 3. Solely for the purposes of this Consent Decree and the underlying
13 Complaint, Defendant waives all objections and defenses that it may have to the
14 Court's jurisdiction or to venue in this District. Defendant shall not challenge
15 entry or the terms of this Consent Decree or this Court's jurisdiction to enter and
16 enforce this Consent Decree.

17 **III. PARTIES BOUND**

18 4. This Consent Decree is binding upon the United States, and upon
19 Defendant and its successors and assigns. Any change in ownership or corporate
20 or other legal status, including but not limited to, any transfer of assets or real or

1 personal property, shall in no way alter the status or responsibilities of Defendant
2 under this Consent Decree.

3 IV. DEFINITIONS

4 5. This Consent Decree incorporates the definitions set forth in Section
5 1001 of OPA, 33 U.S.C. § 2701. Whenever the terms listed below are used in this
6 Consent Decree, the following definitions shall apply:

7 a. “Coast Guard” shall mean the United States Coast Guard and
8 any of its successor departments, agencies, or instrumentalities.

9 b. “Consent Decree” shall mean this Consent Decree and all
10 appendices attached hereto, listed in Section XIV (Integration/Appendix).

11 c. “Day” or “day” shall mean a calendar day. In computing any
12 time period under this Consent Decree, where the last day would fall on a
13 Saturday, Sunday, or federal or state holiday, the period shall run until the close of
14 business of the next working day.

15 d. “Defendant” shall mean Deaton Land, LLC.

16 e. “DOJ” shall mean the United States Department of Justice and
17 any of its successor departments, agencies, or instrumentalities.

18 f. “Effective Date” shall mean the date upon which the Court
19 records approval of this Consent Decree on the Court’s docket.

1 g. “Financial Information” shall mean those financial documents
2 identified in Appendix A.

3 h. “Interest” shall mean interest calculated at the post-judgment
4 interest rate under 28 U.S.C. § 1961, compounded annually. The applicable rate of
5 interest shall be the rate in effect at the time the interest accrues.

6 i. “Oil” shall mean any “oil” as defined under OPA Section
7 1001(23), 33 U.S.C. § 2701(23).

8 j. “Oil Discharge Incident” shall mean the discharge of oil into or
9 upon the navigable waters of the United States and/or the adjoining shorelines
10 from the Outlook Facility that occurred on one or more days starting on or about
11 March 1, 2015.

12 k. “OPA” shall mean the Oil Pollution Act of 1990, as amended,
13 33 U.S.C. § 2701 et seq.

14 l. “Outlook Facility” shall mean the onshore facility located at
15 2330 Outlook Road, Outlook, Washington.

16 m. “Paragraph” shall mean a portion of this Consent Decree
17 identified by an Arabic numeral or an upper or lower case letter.

18 n. “Parties” shall mean the United States and Deaton Land, LLC.

1 o. “Removal Costs” shall mean all costs of removal incurred by
2 the United States associated with the Oil Discharge Incident, as defined by OPA
3 Section 1001(31), 33 U.S.C. § 2701(31).

4 p. “Plaintiff” shall mean the United States.

5 q. “Section” shall mean a portion of this Consent Decree
6 identified by a Roman numeral.

7 r. “United States” shall mean the United States of America, and
8 each department, agency, and instrumentality of the United States, including the
9 Coast Guard.

10 V. PAYMENT OF REMOVAL COSTS

11 6. **Payment by Defendant of Removal Costs.** Defendant shall pay to
12 the United States the principal sum of \$30,000 in three installment payments of
13 \$10,000 each. Defendant shall pay the first installment payment of \$10,000 within
14 thirty days of the Effective Date. The subsequent two installment payments of
15 \$10,000 shall be due on January 15 of each year thereafter. The first payment, if
16 timely paid, shall accrue no Interest. The remaining payments shall include an
17 additional sum for Interest accrued on the unpaid balance calculated from the date
18 of prior payment until the date of the current payment, as applicable. Interest shall
19 be calculated at the post-judgment interest rate under 28 U.S.C. § 1961,

1 compounded annually. Defendant may accelerate these payments, and Interest due
2 on accelerated payments shall be reduced accordingly.

3 7. **Method and Deposit of Payment.** Defendant shall make the
4 payments specified in Paragraph 6 by Fedwire Electronic Funds Transfer (“EFT”)
5 to the U.S. Department of Justice account, in accordance with instructions
6 provided to Defendant by the Financial Litigation Unit (“FLU”) of the United
7 States Attorney’s Office for the Eastern District of Washington after the Effective
8 Date. The payments shall reference the civil action number assigned to this case
9 and DOJ case number 90-5-1-1-11868, and shall specify that the payment is to be
10 deposited in the Oil Spill Liability Trust Fund under 26 U.S.C. § 9509(b). The
11 FLU will provide the payment instructions to:

12 Ward Deaton
13 808 Fountain Boulevard
14 Zillah, WA 98953
15 Telephone: (509) 391-0685
16 Email: Deatonland.ward@gmail.com

17 on behalf of Defendant. Defendant may change the individual to receive payment
18 instructions on its behalf by providing written notice of such change to DOJ and
19 the Coast Guard in accordance with Section XII (Notices and Submissions). The
20 total amount paid under Paragraph 6 shall be deposited in the Oil Spill Liability
21 Trust Fund.

1 8. **Notice of Payment.** At the time of payment under Paragraph 6,
2 Defendant shall send notice that payment has been made to DOJ and the Coast
3 Guard in accordance with Section XII (Notices and Submissions). Such notice
4 shall reference the civil action number assigned to this case, Federal Project
5 Number E15004, and DOJ case number 90-5-1-1-11868.

6 **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

7 9. **Interest on Payments and Accelerated Payments.** If Defendant
8 fails to make any payment required by Paragraph 6 (Payment by Defendant of
9 Removal Costs) by the required due date, all remaining installment payments and
10 all accrued Interest shall become due immediately upon such failure, and if the first
11 payment is not timely made, Interest shall accrue from the Effective Date. Interest
12 shall continue to accrue on any unpaid amounts until the total amount due has been
13 received.

14 10. **Stipulated Penalties.**

15 a. If Defendant fails to make any payment under Paragraph 6 by
16 the required due date, Defendant shall be in violation of this Consent Decree and
17 shall pay, as a stipulated penalty, in addition to the interest required by Paragraph
18 9, \$500 per day for each day that such payment is late.

19 b. Stipulated penalties are due and payable within thirty days after
20 the date of the demand for payment of the penalties by the Coast Guard. All

1 payments to the Coast Guard under this Paragraph shall be identified as “stipulated
2 penalties” and shall be made in accordance with Paragraph 7 (Method and Deposit
3 of Payment) and the notice of payment provisions in Paragraph 8 (Notice of
4 Payment).

5 c. Stipulated penalties shall accrue as provided in this Paragraph
6 regardless of whether the Coast Guard has notified Defendant of the violation or
7 made a demand for payment, but need only be paid upon demand. All penalties
8 shall begin to accrue on the day after payment is due, and shall continue to accrue
9 through the date of payment.

10 d. Notwithstanding any other provision of this Section, the United
11 States may, in its unreviewable discretion, waive payment of any portion of the
12 stipulated penalties that have accrued under this Consent Decree. Payment of
13 stipulated penalties shall not excuse Defendant from the payments required by
14 Paragraph 6 or from performance of any other requirements of this Consent
15 Decree.

16 11. If the United States brings an action to enforce this Consent Decree,
17 Defendant shall reimburse the United States for all costs of such action, including
18 but not limited to costs of attorney time.

1 12. Payments made under this Section shall be in addition to any other
2 remedies or sanctions available to the United States by virtue of Defendant's
3 failure to comply with the requirements of this Consent Decree.

4 **VII. COVENANTS NOT TO SUE BY THE UNITED STATES**

5 13. Except as specifically provided in Section VIII (Reservations of
6 Rights by the United States), the United States covenants not to sue or to take
7 administrative action against Defendant under OPA Section 1002, 33 U.S.C.
8 § 2702, to recover Removal Costs. These covenants shall take effect upon the
9 Effective Date. These covenants are conditioned upon the satisfactory
10 performance by Defendant of its obligations under this Consent Decree. These
11 covenants are also conditioned upon the veracity and completeness of the Financial
12 Information provided to the United States by Defendant and the financial,
13 insurance, and indemnity certification made by Defendant in Paragraph 20. These
14 covenants extend only to Defendant and do not extend to any other person or
15 entity.

16 **VIII. RESERVATIONS OF RIGHTS BY THE UNITED STATES**

17 14. The United States reserves, and this Consent Decree is without
18 prejudice to, all rights against Defendant with respect to all matters not expressly
19 included within Section VII (Covenants Not to Sue by the United States).

1 Notwithstanding any other provision of this Consent Decree, the United States
2 reserves all rights against Defendant with respect to:

- 3 a. liability for failure to meet a requirement of this Consent
4 Decree;
- 5 b. criminal liability;
- 6 c. liability for natural resource damages under Sections 1002 and
7 1006 of OPA, 33 U.S.C. §§ 2702 and 2706; and
- 8 d. any future claim to recover in subrogation under OPA Section
9 1015, 33 U.S.C. § 2715, in connection with a claim made against the Oil Spill
10 Liability Trust Fund under OPA Section 1013, 33 U.S.C. § 2713.

11 15. Notwithstanding any other provision of this Consent Decree, the
12 United States reserves, and this Consent Decree is without prejudice to, the right to
13 reinstitute or reopen this action, or to commence a new action seeking relief other
14 than as provided in this Consent Decree, if the Financial Information provided by
15 Defendant, or the financial, insurance, or indemnity certification made by
16 Defendant in Paragraph 20, is false or, in any material respect, inaccurate.

17 **IX. COVENANTS NOT TO SUE BY DEFENDANT**

18 16. Defendant covenants not to sue, and agrees not to assert any claims or
19 causes of action against the United States, or its agents, contractors, or employees,
20 under OPA or any other federal law or regulation or state law or regulation with

1 respect to the Oil Discharge Incident, including without limitation, any direct or
2 indirect claim for removal costs or damages under OPA or any other provision of
3 law for events arising out of removal activities in connection with the Oil
4 Discharge Incident. These covenants not to sue by Defendant shall not apply to the
5 extent that the United States asserts a claim against Defendant related to the Oil
6 Discharge Incident based on any of the reservations set forth in Section VIII
7 (Reservations of Rights by the United States), other than Paragraph 14.a (liability
8 for failure to meet a requirement of this Consent Decree) or 14.b (criminal
9 liability), but only to the extent that Defendant's claims arose from the same
10 removal action, removal costs, or damages that the United States is seeking
11 pursuant to the applicable reservation. Defendant hereby reserves and retains any
12 defense, cause of action, and right not explicitly waived in this Consent Decree.

13 **X. EFFECT OF SETTLEMENT**

14 17. This Consent Decree does not limit or affect the rights of Plaintiff or
15 Defendant against any third parties, not party to this Consent Decree, nor does it
16 limit the rights of third parties, not party to this Consent Decree, against
17 Defendant.

18 18. This Consent Decree shall not be construed to create rights in, or grant
19 any cause of action to, any third party not party to this Decree.

19. Nothing in this Consent Decree shall be construed to release Defendant or its agents, successors, or assigns from obligations to comply with any applicable federal, state, or local law, regulation, or permit.

XI. CERTIFICATION

20. Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, reports, documents, or other information (including records, reports, documents, and other information in electronic form) (other than identical copies) relating to its potential liability regarding the Oil Discharge Incident since notification of potential liability by the Coast Guard, and that it has fully complied with any and all requests for information regarding the Oil Discharge Incident and Defendant's financial circumstances from the United States, including but not limited to insurance and indemnity information;

b. submitted to the United States Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to the United States and the time Defendant executes this Consent Decree; and

1 c. fully disclosed any information regarding the existence of any
2 insurance policies or indemnity agreements that may cover claims relating to the
3 Oil Discharge Incident, and submitted to the United States upon request such
4 insurance policies, indemnity agreements, and information.

5 XII. NOTICES AND SUBMISSIONS

6 21. Whenever, under the terms of this Consent Decree, notice is required
7 to be given or a document is required to be sent by one Party to another, it shall be
8 directed to the individuals at the addresses specified below, unless those
9 individuals or their successors give notice of a change to the other Parties in
10 writing. Except as otherwise provided, notice to a Party by email (if that option is
11 provided below) or by regular mail in accordance with this Section satisfies any
12 notice requirement of the Consent Decree regarding such Party.

13 As to the Coast Guard:

14 National Pollution Funds Center (CL)
15 Attn: Thomas VanHorn, Chief
16 U.S. Coast Guard Stop 7605
17 2703 Martin Luther King Jr. Ave. S.E. Stop 7605
18 Washington, DC 20593
19 Re: FPN E15004

20
21 Chief, Office of Claims and Litigation (CG-0945)
22 Attn: Brian Judge, Chief
23 U.S. Coast Guard Headquarters
24 2703 Martin Luther King Jr. Ave. S.E. Stop 7213
25 Washington, DC 20593
26 Re: FPN E15004
27

1 As to DOJ:

2
3 Chief, Environmental Enforcement Section
4 Environment and Natural Resources Division
5 U.S. Department of Justice
6 P.O. Box 7611
7 Washington, D.C. 20044-7611
8 Re: DJ # 90-5-1-1-11868
9

10 As to Defendant Deaton Land, LLC:

11
12 Ward Deaton
13 808 Fountain Boulevard
14 Zillah, WA 98953
15 Telephone: (509) 391-0685
16 Email: Deatonland.ward@gmail.com
17

18 22. Notices required to be sent to the United States under this Consent

19 Decree shall be sent to DOJ and the Coast Guard.

20 **XIII. RETENTION OF JURISDICTION**

21 23. This Court shall retain jurisdiction over this matter for the purpose of
22 interpreting and enforcing the terms of this Consent Decree.

23 **XIV. INTEGRATION/APPENDIX**

24 24. This Consent Decree and its appendix constitute the final, complete,
25 and exclusive agreement and understanding among the Parties with respect to the
26 settlement embodied in this Consent Decree. The Parties acknowledge that there
27 are no representations, agreements, or understandings relating to the settlement
28 other than those expressly contained in this Consent Decree and its appendix.

29 Appendix A is a list of all financial documents provided by Defendant for the

1 United States to evaluate Defendant's ability to pay the Removal Costs incurred by
2 the United States as a result of the Oil Discharge Incident. Appendix A is attached
3 to and incorporated into this Consent Decree.

4 **XV. SIGNATORIES/SERVICE**

5 25. Each undersigned representative of Defendant and the United States
6 certifies that he or she is authorized to enter into the terms and conditions of this
7 Consent Decree and to execute and bind legally such Party to this document.

8 26. Defendant agrees not to oppose entry of this Consent Decree by this
9 Court or to challenge any provision of this Consent Decree, unless the United
10 States has notified Defendant in writing that it no longer supports entry of the
11 Consent Decree.

12 27. Defendant shall identify, on the attached signature page, the name and
13 address of an agent who is authorized to accept service of process by mail on
14 behalf of Defendant with respect to all matters arising under or relating to this
15 Consent Decree. Defendant hereby agrees to accept service in that manner and to
16 waive the formal service requirements set forth in Rules 4 and 5 of the Federal
17 Rules of Civil Procedure and any applicable local rules of this Court, including but
18 not limited to, service of a summons. The Parties agree that Defendant need not
19 file an answer to the Complaint in this action unless or until the Court expressly
20 declines to enter this Consent Decree.

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SO ORDERED THIS 10th DAY OF February, 2019. 2020


CONSENT DECREE – 18

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
2 *United States v. Deaton Land, LLC.*

3 FOR THE UNITED STATES OF AMERICA:


4
5
6 10/21/2019

7 Date

8 
9 NATHANIEL DOUGLAS
10 Deputy Section Chief
11 Environmental Enforcement Section
12 Environment and Natural Resources Division
13 U.S. Department of Justice

14
15
16 10/21/2019

17 Date

18 
19 GENEVIEVE S. PARSHALLE
20 Trial Attorney
21 Environmental Enforcement Section
22 Environment and Natural Resources Division
23 U.S. Department of Justice
24 P.O. Box 7611
25 Washington, DC 20044
26 Telephone: (202) 514-2445
Email: Genevieve.Parshalle@usdoj.gov

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
2 *United States v. Deaton Land, LLC.*

3 FOR DEFENDANT DEATON LAND, LLC:

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10

11

May - 9 - 2019
Date

Ward Deaton
Ward Deaton
808 Fountain Boulevard
Zillah, WA 98953
Telephone: (509) 391-0685
Email: Deatonland.ward@gmail.com